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Before the  
FEDERAL COMMUNICATIONS COMMISSION FEB 10 1998  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of )  
RAINBOW BROADCASTING COMPANY ) GC Docket No. 95-172  
For an extension of time ) File No. BMPCT-910625KP  
to construct ) File No. BMPCT-910125KE  
and ) File No. BTCCT-911129KT  
For an Assignment of its )  
construction permit for )  
Station WRBW(TV), Orlando, Florida )  
TO: The Commission

REQUEST FOR OFFICIAL NOTICE

1. Press Communications, LLC ("Press") hereby requests that the Commission take official notice of the decision of the Chief, Video Services Division, issued on January 14, 1998. A copy of that decision is included as Attachment A hereto.

2. As the Commission is aware, in his Initial Decision in the above-captioned proceeding, Administrative Law Judge Joseph Chachkin made several assertions concerning the possibility of some complicity between Press and Guy Gannett Publishing Co. ("Gannett") in a supposed effort to delay construction of Station WRBW(TV) by Rainbow Broadcasting Company ("Rainbow"). In its Exceptions to the Initial Decision which are presently pending before the Commission, Press has objected to the Presiding Judge's unsupported statements and has urged that they

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be stricken from the record. <sup>1/</sup>

3. While the above-captioned proceeding has been pending, Rainbow and its alter ego, Rainbow Broadcasting, Limited (which is also referred to herein as "Rainbow" for the sake of convenience), have filed objections to applications which Press has filed. Following the release of the Initial Decision, Rainbow relied in its various objections on Judge Chachkin's unsupported accusatory language. Press opposed Rainbow's purely speculative arguments.

4. By a letter decision issued January 14, 1998, the Chief, Video Services Division ("VSD"), has acted on the allegations advanced by Rainbow and based on the Initial Decision's speculative statements. As set forth in the VSD's letter, the VSD rejected Rainbow's allegations.

5. While the VSD's decision is not yet final and, therefore, not binding on the Commission, Press believes that the Commission should nevertheless be aware of the VSD's decision in connection with the Commission's deliberations in the above-

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<sup>1/</sup> Gannett was not a party to the hearing and thus did not participate in the development of the record evidence. Upon learning of the language in the Initial Decision raising questions about Gannett's conduct, Gannett sought to intervene herein and to have that language stricken. Press did not object to Gannett's petition, which is presently pending before the Commission.

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captioned proceeding. Accordingly, Press requests that the Commission take official notice of the VSD's decision.

Respectfully submitted,

  
/s/ Harry F. Cole  
Harry F. Cole

Bechtel & Cole, Chartered  
1901 L Street, N.W. - Suite 250  
Washington, D.C. 20036  
(202) 833-4190

Counsel for Press Communications, LLC

February 10, 1998

ATTACHMENT A



Federal Communications Commission  
Washington, D.C. 20554

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Re: Application for Renewal of License  
Station WKCF(TV), Clermont, FL

Applications for Consent to Assignment  
Stations WKCF(TV), Clermont, FL  
(BALCT-970603IA)  
WBUD(AM)/WKXW(FM), Trenton, NJ  
(BAL-970603IB and BALH-970603IC)  
WBSS(FM), Millville, NJ (BALH-970603ID)  
W04CN, Cocoa, FL (BALTVL-970603IE)

Gentlemen:

On January 2, 1997, Leticia Jaramillo, Joseph Rey and Rainbow Broadcasting, Ltd. (collectively, "petitioners")<sup>1</sup> filed a petition to deny the application filed by Press Broadcasting Company (P & LFT)<sup>2</sup> for renewal of its license for station WKCF(TV), Channel 18, Clermont, Florida. As initially filed, the petition to deny the renewal application was based on the same facts, circumstances and arguments raised by petitioners in July 1996 in a petition to deny an

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<sup>1</sup> Jaramillo and Rey reside within the service area of WKCF(TV) and are also shareholders of Rainbow Broadcasting, Ltd., permittee of station WRBW-TV at Orlando, Florida, which competes with WKCF(TV).

<sup>2</sup> On November 25, 1997, Press amended the assignment applications to reflect the *pro forma* assignment of the licenses, pursuant to prior Commission approval, to P & LFT, L.L.C.

application for assignment of license of station WTKS(FM) at Cocoa Beach, Florida from Press to Paxson Broadcasting of Orlando, L.P. (BALH-960611GU).<sup>3</sup> Petitioners supplemented their petition to deny the WKCF(TV) renewal on May 1, 1997, to provide "information that raises a substantial question of fact as to whether or not Press has abused the Commission's processes, as noted by the Administrative Law Judge in an Initial Decision" granting the application of Rainbow for an extension of time to construct and for assignment of the construction permit for WRBW-TV.<sup>4</sup> Finally, on July 11, 1997, petitioners filed a petition to deny the above-referenced applications to assign the licenses for stations WKCF(TV), WBUD(AM)/WKXW(FM), Trenton, New Jersey, WBSS(FM), Millville, New Jersey, and television translator W04CN, Cocoa, Florida, from Press to Press Communications, L.L.C., which incorporated its previous filings in connection with WTKS(FM) and WKCF(TV). These petitions have been fully briefed by the parties.

Discussion. With respect to the issues raised in petitioners' January 2, 1997 petition to deny the WKCF(TV) renewal application, and incorporated in their July 11, 1997 petition to deny the five television and radio assignment applications, relating to the WKCF(TV) intraband channel exchange, the Commission has already fully considered those issues in connection with the WTKS(FM) assignment application, and concluded that petitioners failed to present a substantial and material question of fact which would preclude favorable action on that assignment application.<sup>5</sup> We disagree with petitioners' assertion that the Commission's decision in the radio proceeding is not dispositive in connection with the WKCF(TV) renewal application, because "the television application seeks renewal of the license for the very channel which involves Press' character derelictions." The Commission has, on three occasions, fully considered petitioners' allegations and concluded that they failed to demonstrate that Press had engaged in any FCC-related misconduct in connection with the intraband channel exchange.

Turning to the matters raised in petitioners' May 1, 1997 supplement, in assessing the merits of a petition to deny, a two-step process is required under Section 309(d)(1) and (2) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d)(1), (2). See *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988). The first test is whether the petition demonstrates by specific allegations of fact that grant of the application would be *prima*

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<sup>3</sup> The petition to deny the WTKS(FM) assignment application argued, *inter alia*, that Press lacks the character qualifications necessary to remain a Commission licensee based on its conduct in connection with an intraband channel exchange in the 1980's involving WKCF(TV).

<sup>4</sup> *Rainbow Broadcasting Company*, 12 FCC Rcd 4028 (ALJ 1997).

<sup>5</sup> See Letter from Chief, Audio Services Division to counsel for Press, petitioners and Paxson, dated January 16, 1997, denying petition to deny; Letter from Chief, Audio Services Division, dated April 9, 1997, denying petition for reconsideration; *Press Broadcasting Company, Inc.*, FCC 97-416 (released January 12, 1998), denying application for review.

*facie* inconsistent with the public interest, convenience and necessity. If such a *prima facie* case is alleged, the second test is whether -- on the basis of the application, the pleadings, or other matters of which the Commission may take official notice -- a substantial and material question of fact is presented to warrant further inquiry in a hearing.

On balance, we do not believe petitioners have raised a substantial or material question of fact that would require further inquiry at a hearing. Petitioners argue first, that "the record evidence and the ALJ's findings, implicate serious questions regarding the relationship between Gannett and Press and Press' successful attempt to keep [Rainbow] from constructing its television facilities . . . ." In support of their contention that "Press attempted to keep WRBW-TV from initiating operations as the fifth television station in the market by colluding with [Gannett], the owner of a transmitting tower at Bithlo, Florida," petitioners summarize certain findings of fact by the ALJ with respect to the tower litigation misrepresentation issue designated against Rainbow, and *dicta* regarding possible explanations for Gannett's failure to earlier construct the WRBW-TV transmission facilities.<sup>6</sup> Petitioners further cite to a footnote in the *Initial Decision* which states that "[w]hile the actions of Gannett and Press [in connection with Gannett's construction delay] are outside the purview of this hearing, the Commission may wish to further consider this matter." *Rainbow*, 12 FCC Rcd at 4059, n.21. We have reviewed the parties' submissions and conclude that absent specific factual allegations, supported by affidavit, that Press and Gannett engaged in some illegal conduct, or that their primary purpose was to delay initiation of service by WRBW-TV,<sup>7</sup> we see no reason to investigate further the circumstances surrounding the construction of the WRBW-TV transmission facilities on Gannett's Bithlo tower.<sup>8</sup> Petitioners also assert that it is now apparent from the evidentiary hearing that

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<sup>6</sup> The grant of Rainbow's construction permit became final on August 30, 1990, and in early 1990, Rainbow began to press Gannett to construct its transmitter building; construction of the building, however, was not completed until November 1991. Some of this delay was clearly attributable to the entry of a status quo order in Rainbow's lawsuit against Gannett, seeking to enjoin Gannett from leasing space to Press, which basically halted construction at the Bithlo tower between November 1990 and June 1991. With respect to Gannett's failure to construct prior to entry of the order, the ALJ noted that "[t]he reasons for Gannett's failure to undertake construction are not disclosed by the record [as] no Gannett or Press official testified." The Judge concluded, however, that "it is reasonable to infer that Gannett did not intend to construct the building until Press was included as a tenant," and that "a further unanswered question is whether Press played any role in Gannett's decision." *Initial Decision*, 12 FCC Rcd at 4048.

<sup>7</sup> See, e.g., *Radio Carrollton*, 69 FCC 2d 1139, 1151 (1978)(subsequent history omitted.)

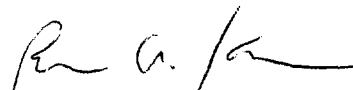
<sup>8</sup> We believe that a fair reading of the facts suggests that Press' primary purpose was to obtain a lease from Gannett to allow Press to place its transmitter at the optimal location on the existing Bithlo tower, thereby saving it the time and expense of having to build a tower, and facilitating the earliest service to the Orlando market upon approval of the intraband exchange. In addition, there is no evidence to suggest that Gannett was motivated by

Press made arguments in connection with its objections to the fifth and sixth WRBW-TV extension applications which it knew were incorrect. Specifically, petitioners contend that "what is now decisional is the fact that Press was in possession of the [Rainbow]-Gannett lease and was fully aware that [Rainbow] could not have moved forward without Gannett's permission," yet continued to "misrepresent[] that Rainbow's 'inaction' was the result of its own doing." We have reviewed the filings made in connection with the extension applications and conclude that the representations made by Press do not raise a substantial and material question of fact meriting further review.

Conclusion. Based on the foregoing, we find that petitioners have failed to raise a substantial and material question of fact requiring resolution in a hearing. We further find that the applicants are fully qualified and that a grant of the WKCF(TV) renewal application and the applications for assignment of licenses will serve the public interest, convenience and necessity.

Accordingly, the Petitions to Deny filed by Leticia Jaramillo, Joseph Rey and Rainbow Broadcasting, Ltd. ARE DENIED. Further, the application for renewal of license for WKCF(TV) (BRCT-961001ZK) IS GRANTED; and the applications for assignment of license of WKCF(TV), Clermont, Florida (BALCT-970603IA); WBUD(AM)/WKXW(FM), Trenton, New Jersey (BAL-970603IB and BALH-970603IC); WBSS(FM), Millville, New Jersey (BALH-970603ID); and W04CN, Cocoa, Florida (BALTVL-970603IE) from P & LFT, L.L.C. to Press Communications L.L.C. IS GRANTED.

Sincerely,



Barbara A. Kreisman  
Chief, Video Services Division  
Mass Media Bureau

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anything other than its desire to fully utilize the space on its tower. In contrast, petitioners admit that Rainbow always "viewed itself as the fifth television station to operate in the Orlando, Florida market with transmission facilities in a centrally located area of the market at Bithlo" and that it expected a fifth station "to be highly competitive . . . ." Rainbow refused to consent to allow another broadcaster to duplicate Rainbow's tower space because it understood that "if Press were able to utilize the 1500 aperture, it meant that [Rainbow] . . . would have become the sixth, rather than the fifth, television station and that its market position would have been seriously compromised." Accordingly, Rainbow filed a lawsuit in 1990 seeking an injunction to prevent Gannett from leasing space to Press, which was eventually settled with Gannett paying Rainbow a "substantial sum of money" for Rainbow's consent to allow Press' antenna on the tower. *Initial Decision*, 12 FCC Rcd at 4051, n.13.



CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 10th day of February, 1998, I have caused copies of the foregoing "Request for Official Notice" to be hand delivered (as indicated below) or placed in the United States mail, first class postage prepaid, addressed to the following individuals:

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Office of the General Counsel  
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(By Hand)

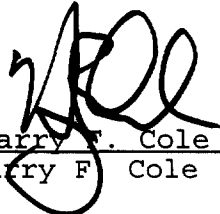
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